

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH

SERVICE TAX APPEAL NO. 23542 OF 2014

(Arising out of Order-in-Original No. HYD-EXCUS-003-COM-20/14-15 dated 18.07.2014 passed by the Commissioner of Central Excise, Hyderabad)

Commissioner of Central Excise,
Hyderabad-III Commissionerate, Hyderabad

...Appellant

versus

Macro Media Digital Imaging Pvt. Ltd.
147/D, Secto-I, Line-1, Phase-II,
Cherlapally IDA, Hyderabad- 500051
(Telangana State)

...Respondent

Appearance

Mr. V.R. Pavan Kumar, Authorized Representative of the Department
Mr. S. Thirumalai, Advocate for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 04.05.2022
Date of Decision: 14.09.2022**

FINAL ORDER NO. A/30086/2022

JUSTICE DILIP GUPTA:

The Department has filed this appeal to assail the order dated 18.07.2014 passed by the Commissioner of Customs, Central Excise and Service Tax, Hyderabad¹, by which the proceedings initiated by show cause notices dated 22.10.2012 and 12.05.2014 have been dropped.

2. The first show cause notice dated 22.10.2012 was issued for the period April 2007 to March 2012 calling upon M/s. Macro Media Digital

1. the Commissioner

Imaging Private Limited² to pay service tax on 'advertising agency' services with interest and penalty. The second show cause notice dated 12.05.2014 was issued for the subsequent period from April 2012 to March 2013.

3. According to the respondent, it is engaged in the business of 'wide format printing'. It has no role in conceptualization or in making or creation of design for advertisement to be printed for customers. The customers provide the 'ready to print' advertisement content and the respondent undertakes the printing of such content on PVC material procured by the respondent from the open market. The respondent has no authority from the customers for making any changes since the scope of the activity is limited to printing. Thus, according to the respondent, it has no role in the 'making of the advertisement'.

4. However, a show cause notice dated 22.10.2012 was issued to the respondent for recovery of service tax for the period April 2007 to March 2012. The show cause notice was issued to show cause as to why-

- a. An amount of Rs. 21,66,58,906/- (including cesses) should not be demanded from them towards service tax payable on account of 'Advertisement Services' provided by them under section 73(1) of the Finance Act, 1994 read with the proviso thereto:
- b. Interest at the applicable rates should not be paid by them under the provisions of section 75 of the Finance Act, 1994 on the amount demanded at (i) supra.
- c. Penalty should not be imposed on them under section 76 of the Finance Act, 1994 for the

2. the respondent

contravention of statutory provisions, as detailed supra during the period prior to 10.05.2008.

- d. Penalty should not be imposed on them under section 77 of the Finance Act, 1994 for the contravention of statutory provisions, as detailed supra.
- e. Penalty should not be imposed on them under section 78 of the Finance Act, 1994 for mis-statement, suppression of facts and contravention of provisions of chapter V of the Finance Act or the rules made there under, with intent to evade payment of service tax as detailed in the notice.

5. The relevant portion of the show cause notice is reproduced below:

"5. The activity of Macromedia is to provide services related advertising/marketing campaigns of their customers though converting digital format communication media into quality wide format printing. Though Macromedia claims that they are mainly engaged in wide format printing on flex banners, they are not disputing the fact that the printing done only for the purpose of advertisement. In clear parlance, the assessee, admittedly is engaged in production and sale of advertising materials based on orders received from their customers. xxxxxxxx."

6. This show cause notice was followed by another show cause notice dated 12.05.2014 for the subsequent period from April 2012 to March 2013.

7. The appellant filed a detailed reply to the aforesaid show cause notice. The factual description of the activities undertaken by the respondent have been stated to be as follows:

9. **It is submitted that the noticee is in the business of 'wide/large format printing wherein the notice undertakes printing activity for the banners,**

billboard, etc. as per the design content provided by the customers on PVC/flex materials.

10. In this regard, it is submitted that the noticee's activity does not involve any designing, conceptualization of the advertising content but limited to the printing as per the designs supplied by the customers. This factual position is not disputed in the SCN under reply as can be seen from the averments in para 7. It is pertinent to note here that the noticee is not even involved in the modification of such designs and merely checks the printability aspect of the design so supplied before undertaking the printing activity as per the customer requirements.

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11. It is also submitted that the noticee is also not authorized by the customers for making any changes in the designs supplied neither having any specialization in creation or conceptualization of such design so as to get covered under the term 'making of advertisement. The Purchase orders received from the customers clearly evidenced that the activity carried out by the noticee is mere printing of the materials based on the design and specification provided by the customers and by no stretch of imagination be treated as 'making of advertisement'. xxxxxxxxxxxxx.

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8. A similar reply was filed by the respondent to the second show cause notice dated 12.05.2014.

9. The Commissioner, by order dated 18.07.2014, dropped the proceedings initiated by the two show cause notices.

10. Shri V.R. Pavan Kumar, the learned authorised representative appearing for the department, made the following submissions:

- (i) In respect to the bills raised by the respondent, the consumers are deducting TDS which clearly indicates that the activity undertaken by the appellant is a service;
- (ii) This apart, the respondent have not discharged VAT on merits, but only under a composition scheme

which indicates that service is involved in the transfer of goods;

- (iii) From the definition of 'advertising agency' under section 65 (3) of the Finance Act, any person engaged in providing any service connected with the making, preparation or display of advertisement would be providing 'advertising agency' services;
- (iv) The Commissioner committed an error in placing reliance upon the letter of CBEC dated 16.08.1999 granting exemption to persons engaged in printing and publishing of telephone directories, yellow pages or business directories;
- (v) The Commissioner also committed an illegality in referring to the Circular dated 23.08.2007 which clarified that mere canvassing advertisements for publishing on commission basis is not classifiable under advertising service; and
- (vi) To support these contentions, the learned authorised representative placed reliance upon the decision of the Kerala High Court in **Commissioner of Central Excise & Customs vs. Zodiac Advertisers**³ and the decision of the Supreme Court in the appeal filed by **Zodiac Advertisers**, which decision is reported in **Zodiac Advertisers vs. Commissioner of C. Ex. & Cus., Cochin**⁴.

11. Shri S. Thirumalai, learned counsel appearing for the respondent, however, supported the impugned order and broadly made submissions under the following three heads:

'Advertising Agency' services does not include mere printing of advertisement material

- (i) Activity of printing 'ready to print' advertisement context on PVC flex material and sale of such printed material amounts to sale of goods but not a service and thereby no service tax is payable on the said activity under 'advertising agency' service;

3. 2009 (13) S.T.R. 593 (Ker.)

4. 2009 (14) S.T.R. 449 (S.C.)

- (ii) A person shall be considered to be an 'advertising agency', if he is engaged in providing any service connected with making, preparation, display or exhibition of advertisement. As the activity of the respondent is printing of 'ready to print' advertisement content on PVC material and sale of the same to customers, the plea of the department that the same would come under the ambit of 'advertising agency' is not correct;
- (iii) In view of the clarification given by the Calcutta Commissionerate in the letter dated 16.08.1999, it is clear that mere printing of 'ready-made' or 'ready to print' advertisement cannot be considered as service leviable to service tax under 'advertising agency' services. In order to levy tax on any activity under 'advertising agency' services, the activity should be related to making or preparation of an advertisement, such as designing, visualizing, conceptualizing etc. which is absent in the present case;
- (iv) An 'advertisement agency' basically prepares the contents of the advertisement material and is strategically involved in the manner in which the content of such advertisement is displayed or exhibited to the targeted public. The legislative intent is not to tax every activity connected with advertisement;
- (v) The CBEC, by letter dated 23.08.2007, had clarified that persons/agencies who canvas advertisement for publishing on commission basis and do not undertake any activity involving making, preparation, display or exhibition of advertisement do not come under the ambit of 'advertising agency' services;

Printing activity amounts to 'manufacture' and so no service tax is payable

- (vi) The activity of printing of advertisement content on PVC material resulting into printed PVC flex or PVC board are considered as products of printing

industry. Such printing activity results into 'manufacture' as defined under section 2(f) of the Central Excise Act, 1944. These products are classifiable under the Tariff 4911 10 10 of the Central Excise Tariff and are exempted from levy of central excise duty;

No service tax payable from 01.07.2012 onwards as printing activity is not a 'service'

(vii) The order passed by the adjudicating authority also sets aside the demand of service tax under the subsequent show cause notice for the period from 01.07.2012 to 31.03.2013. Though the appellant has preferred this appeal against the entire order, but no grounds have been stated in the appeal memo challenging the findings of the adjudicating authority that no service tax is payable for this period; and

(viii) The show cause notice for the subsequent period April 2012 to March 2013 fails to specify under what charges the respondent was being subjected to service tax levy under the Negative list-based taxation effective from 01.07.2012.

DISCUSSION

12. The submissions advanced by the learned authorized representative appearing for department and the learned counsel appearing for the respondent have been considered.

13. The issue that arises for consideration is whether the activity of "wide format printing" and 'supply of advertising material to clients' based on the designs provided by the clients would amount to rendering any service. According to the respondent it had no role in conceptualization or in the making or creation of design for advertisement to be printed for customers, for the appellant merely carried out the activity of wide format printing and supply of

advertisement material to the clients. The customers provided the 'ready to print' advertisement content and the respondent undertook the printing of such content on PVC material procured by the respondent from the open market. The respondent also contends that it has no authority from the customers to make any changes in the advertisement content provided by customers and the scope of the activity is limited to printing the contents provided by the customers on the PVC material. Thus, according to the respondent, it has no role in the 'making of advertisement'. According to the Department, the work undertaken by the respondent would amount to a service under the category of 'advertising agency' service as defined in section 65 (3) of the Finance Act and made taxable under section 65 (105)(e) of the Finance Act.

14. To appreciate the contentions, it would be appropriate to reproduce the definition of 'advertising agency'. It is defined under section 65(3) of the Finance Act as follows:-

"Section 65(3): 'advertising agency' means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant."

15. It is made taxable under section 65 (105)(e) of the Finance Act and it is reproduced below:

"Section 65 (105)(e): 'taxable service' means any service provided or to be provided to any person, by an advertising agency in relation to advertisement in any manner."

16. The Commissioner, after examining the nature of the work undertaken by the respondent, noted that what was required to be decided was whether mere printing activity can be considered as

'advertising agency' services only because the printed matter is advertisement material. After referring to various decisions of the Tribunal and the Circulars issued by the Board, the Commissioner held that the activity of printing of flex banners by the respondent as per the requirement of the customers and selling the same to the customers would not be covered under the scope of the 'advertising agency' services for the period prior to 01.07.2012 and even for the period post 01.07.2012, the activity undertaken by the respondent, being merely transfer of goods by sale which is subject to Sales Tax/VAT on the full value, is excluded from the scope of the service tax under section 65B (44)(a)(i) of the Finance Act. The relevant portions of the order passed by the Commissioner are reproduced below:

20. I have examined the records of the case and the submissions made by the assessee carefully. **The point for decision is whether or not the assessee is liable for service tax as advertising agency in respect of activities undertaken by them. The admitted facts of the case are that the assessee are undertaking printing work of flex banners, bill boards etc., as per the design and content provided by the customers. They have printing machines for wide/large format printing. It is also an admitted fact that they are not involved in any designing, conceptualizing of the advertising content and their activities are limited to printing as per the designs supplied by the customers.** The only point on which service tax liability was sought to be confirmed is that they are engaged in printing and making advertisement material with the name, product name, logo or trade mark etc., of the customers. In other words, they are engaged in production and sale of advertising material based on orders received from their customers. Since as per the definition under Section 65(3) of the Finance Act, 1994, "advertising Agency" means any person engaged in providing any service connected with the making,

preparation, display or exhibition advertisement includes advertising consultancy and as the assessee are engaged in production and sale of flex banners, boards containing the advertisement given by the customers, they are sought to be included in 'Advertising Agency'. **The work of such agency covers within its ambit any service connected with making, preparation display or exhibition of advertisement. The assesseees are involved in printing and selling flex boards and banners containing advertisements, as such they are also sought to be included under the category of Advertising Agency.** Support for this was drawn from the terms 'any service connected with making, preparation of advertisement'. The assesseees strongly contested their liability for the service tax stating that they are involved in printing as per the requirements of their customers and are no way connected with the creation of contents or subsequent display of the advertisement materials. They have expertise in printing and they are not involved in any conceptualization, designing or consultation in advertising of any product or service of the customers in any manner. In simple terms, the point for decision is whether a mere printing activity can be considered as a work of advertising agency, only because the printed matter is advertisement material. **The thrust given in the show notice that any person engaged in making advertisement material should be considered as advertising agency is misleading.**

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24. **Board vide letter F.No. 345/4/97-TRU dated 16.08.1999 while examining the service tax liability of printing and publishing telephone directories, yellow pages or business directories, clarified that their activity is essentially of printing a readymade advertisements from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspapers or periodicals. As such, this activity shall not attract service tax.** However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualizing, conceptualizing etc., they will be liable to pay service tax on the charges made thereon".

25. **Further, vide circular No.6/7/2007-ST dated 23.08.2007, the Board clarified that merely canvassing advertisements for publishing on commission basis is not classifiable under advertising services.**

26. **It is also noticed that the printed material is sold by the assessee to their customers and VAT is being discharged on the value. The transaction between the assessee and the customer is essentially on sale of goods.** The processes involved in preparation of the flex boards and banners resulting in printed material containing components of advertisement, can more appropriately be considered as production and processing of goods for the customers.

27. **Considering the above legal position, case laws and discussion, I find that the activity of printing of flex banners, boards etc., by the assessee as per the requirement of the customers and selling the same to the customers cannot be covered under the scope of advertising agency for the purpose of service tax. For the period after 01.07.2012, the activity undertaken by the assessee being merely transfer of title on goods by sale subjected to sales tax/vat on the full value is excluded from the scope of service tax as per Section 65B(44)(a)(1).** As already noted, the only basis on which the service tax was sought to be levied on the assessee, is that they are engaged in making and producing banners and flex boards, containing advertisements. No other activity has been alleged or evidenced. It is also not disputed that there is sale transaction of the said products and material. As such I find levy of service tax on the assessee based on the allegation made in show cause notice is not sustainable.”

(emphasis supplied)

17. As noticed above 'advertising agency' has been defined to mean any person engaged in providing any service connected with the making, the preparation, display or exhibition of advertisement. It is not in dispute that in the present case the customers provide the

'ready to print' advertising content to the respondent and the respondent merely prints the advertisement content on the PVC material procured by the respondent from the open market. The respondent has no role at all in the conceptualization or in the making or creation of design. In fact, the respondent has no authority at all to even make any changes in the advertisement content provided by the customers and the respondent merely prints that on the PVC material procured from the market. This activity would not fall within the scope of the activity contemplated under section 65(3) of the Finance Act.

18. This issue was also considered in the Trade Notice dated 16.08.1999 issued by the Calcutta Commissionerate. After examination of the matter, it was decided that where ready made advertisement provided by the customers is printed and published in the telephone directory, the activity will not attract service tax and it is only when persons also undertake any activity relating to making or preparation of an advertisement that service tax would be levied. The said Trade noticed dated 16.08.1999 is reproduced below:

"Trade Notice – Service Tax

Trade Notice No. 99/GL-90/C.E./PRO/CAL-II/99

Calcutta Commissionerate

Dated 16-08-1999

**Communicated by CBEC through 345/4/97-TRU
dated 16.08.1999**

Attention of the Trade and Field Formations are invited to the fact that doubts have been raised as to whether persons engaged in the activity of compilation, printing and publishing of telephone directories, Yellow pages and business directories are covered under the definition of 'advertising agency' and accordingly liable to pay service tax.

2. The matter has been examined by the Ministry of Finance, Department of Revenue (Tax Research Unit). It has been decided that in the case of persons, who are printing and publishing telephone directories, Yellow pages or business directories, their activity is essentially of printing a readymade advertisement from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspapers or periodicals. As such, this activity shall not attract service tax. However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualizing, conceptualizing etc., then they will be liable to pay service tax on the charges made thereon."

19. It would also be important to refer to the 'Frequently Asked Questions' on Service Tax issued by the Chief Commissioner of Central Excise, Coimbatore Zone (Third Edition dated 19.06.2006). It provides that mere publishing of prepared advertisement in a paper or magazine is not the function of an 'advertisement agency' and hence would not fall within the scope of 'advertising agency' service. The same is reproduced below:

"Frequently Asked Questions on Service Tax

**Chief Commissioner of Central Excise, Coimbatore
Zone – Third Edition dated 19-06-2006**

17.15. Advertising agency

Scope:

- The taxable service provided or to be provided to a client by any person in relation to making preparation, display or exhibition of advertisement i.e., circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas for publicity is covered under the category of Advertising agency service.
- Advertisement agency basically prepares content of the advertisement material for publicity as per the requirement of the client and/or arranges the space in any kind of media.

Inclusion:

- The definition of 'advertising agency' also covers 'advertising consultant'.
- Market research relating to advertisement forms part of the service in relation to the advertisement.

Exclusion:

- Mere publishing of prepared advertisement in a paper or magazine or broadcast of prepared advertisement on electronic media by TV or Radio channel are not the functions of an advertisement agency. Hence such activities do not fall within the scope of the Advertisement agency service."

20. It would also be useful to refer to the Master Circular dated 23.08.2007 clarifying technical issues relating to taxation of services. In respect of the issue as to whether merely canvassing advertisement for publishing on a commission basis would attract levy of service tax, the said Circular mentions that it would not be taxable under section 65(105) (e) of the Finance Act. The relevant portion of the Circular is reproduced below:

"Circular 96/7/2007-ST dated 23.08.2007**Master Circular clarifying technical issues relating to taxation of services**

Circular No. 96/7/2007-S.T., dated 23.08.2007

F.No. 354/28/2007-TRU

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

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Reference Code	Issue	Clarification
(1)	(2)	(3)
004.01/ 23.08.07	Persons/agencies canvass advertisements for publishing, on commission basis. Such persons/agencies do not	Merely canvassing advertisement for publishing, on commission basis,

	<p>provide any other services like making, preparation, display or exhibition of advertisement.</p> <p>Whether merely canvassing advertisement for publishing on a commission basis by persons/agencies is classifiable as Advertising Agency service [section 64(105)(e)] or not?</p>	<p>is not classifiable under the taxable service falling under section 65(105)(e).</p> <p>Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].</p>
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21. It also needs to be noted that the Commissioner has also, after noticing that the respondent is not involved any designing, conceptualization of the advertising content and that the activity is limited to printing as per the contents supplied by the customers and after placing reliance upon the Trade Notice dated 16.08.1999 and the Circular dated 23.08.2007, held that the activity undertaken by the respondent would not fall within the definition of 'advertising agency'.

22. In **William Lea (India) Pvt. Ltd. versus Commissioner of C. Ex., Chennai-IV⁵**, a division bench of the Tribunal held that where the basic marketing or promotional material as per the approved design layout has been provided by the Reader's Digest to the appellant therein for getting them printed, and the appellant was only required to procure material on which it was to be printed, it would not mean that the service provided by the appellant would fall within the definition of 'advertisement agency'. The relevant portion of the decision is reproduced below:

"5.3 The consistent stand of the appellants right from the reply to the SCN is that contract from Reader's Digest is for sourcing the paper, card, envelopes, cover, etc., from the market, preparing personalized letters as per the design given by Reader's Digest and then mailing

materials to their customers; that they are not engaged in preparation or display of advertisement; that they were only acting as organizing agents; that they had only purchased paper, card, envelope, cover, etc., from the market and personalized letter effect was provided by another service provider; that finally they had only mailed the said letter to the clients of Reader's Digest. We find that the findings of the adjudicating authority in this regard are seen in paragraph 11(iii) as under:

(iii) As per the agreements and periodical work orders, the assessee has undertaken to print in paper the subject matter of Reader's Digest's marketing or promotional material as per the approved design layout and mail the material to customers as per the mailing schedule given by 'Reader's Digest'. The assessee had provided services of procurement of material including paper, personalizing the papers, get printed the subject matter, quality control of the final product and posting/dispatching the material as per the mailing schedule. For providing the above services, the assessee has outsourced activities such as printing, scoring, inserting in covers, etc. Further they have deputed a person for co-ordinating the entire operations with the vendors and Reader's Digest.

Having made these observations and analyzed the definitions of "advertising agency service", "business auxiliary service" and mailing list compilation and mailing service", the adjudicating authority concludes, in the same paragraph, that service provided by appellants to Reader's Digest merits classification as taxable services provided by an advertising agency in relation to the advertisement under Section 65(105)(e) of the Act.

5.4. We are unable to fathom these conclusions of the lower appellate authority. Surely it cannot be said of the appellants that they had prepared advertising material on their own. On the other hand, the facts clearly indicate that the basic market promotional material as per the approved design lay out by Reader's Digest had been given to the appellants for getting

them printed in approved material. Appellants were only required to procure the material including paper, get the subject matter printed on to such paper with personalization for individual clients and post/despatch the material as per the mailing schedule. It cannot also be said of the appellants that they were engaged in display or exhibition or for that matter that they were 'Advertising Consultant' for Reader's Digest."

23. In **Zee Telefilms Ltd. versus Commissioner of C. Ex. (Appeals), Mumbai-IV⁶**, the Tribunal emphasized that the definition of 'advertising agency cannot be read literally out of context and the relevant portion of the decision is reproduced below:

"Therefore, the definition of 'advertising agency' cannot be read literally and out of context, if done so then every person some way connected with an advertisement will be advertising agency. That cannot be and is not the coverage of the Service Tax envisaged. In the present case, one cannot ignore term being defined i.e. 'advertising agency' and proceed to levy service tax on-

- (i) any commercial concern.
- (ii) providing service connected with making, preparation, display or exhibition of advertisements.

If the definition is read in isolation and in an all encompassing manner out of context, then any person/company employing cameraman connected with shooting of advertisement film will become an advertising agency. A caterer supplying tea and biscuits during the production of advertising film will also become a person connected with preparation of advertisement and become an advertising agency. Similarly, a lawyer advising whether advertising film will be violating copyright law or other laws relating to obscenity etc. would be treated as advertising agent. Similarly a broadcaster (on radio or television) of an advertisement will become an advertising agency, or a cinema hall flashing an advertisement or newspaper/magazine publishing an advertisement will become an advertising agency. Such absurdities, from an

6. 2006 (4) S.T.R. 349 (Tri. - Mumbai)

interpretation have to be avoided, the term 'service connected with' used in the definition of "Advertising Agency" is to be understood in context of and in a restrictive manner."

24. Learned authorised representative appearing for the appellant, however, placed reliance upon the judgment of the Kerala High Court in **Zodiac Advertisers**. The High Court held that all commercial concerns engaged in any of the activities connected with advertisement, which includes making, preparation displaying or exhibition of advertisement, answer the description of advertising agency. The High Court also distinguished the Circular dated 16.08.1999 by observing that in the present case the respondent was not engaged in printing work only.

25. It further needs to be noticed that against the decision of the High Court in **Zodiac Advertisers**, the department filed an appeal before the Supreme Court and the Supreme Court set aside the order passed by the Tribunal as well as the High Court. The Supreme Court remitted the matter to the Tribunal to examine whether the appellant undertook the work of conceptualising, visualising and creating the advertisement or whether it was only complying with the instructions of the clients. The relevant portion of the judgment of the Supreme Court is reproduced below:

"2. Having heard learned counsel on both sides, we are of the view that an important question of law does arise in this case, namely, whether an assessee comes within the definition of the word 'advertising agency' as defined in Section 65(3) of the Finance Act, 1994 as amended.

3. However, on perusing the record, we find that material documents, particularly, orders and purchase materials, books of accounts etc., were not placed before the Tribunal/Adjudicating Authority despite

being called upon to do so. There is a specific finding to that effect in the High Court's Order impugned herein.

4. In the circumstances, we set aside the order of the High Court as well as that of the Tribunal, giving final opportunity to the appellant herein to produce all the relevant records particularly to show the nature of the work which the appellant specifically undertakes. **Accordingly, the matter stands remitted to the Tribunal which would examine whether the appellant herein is undertaking the work of conceptualising, visualising and creating the advertisement or whether it is only complying with the instructions of its clients.** This aspect needs further details. Therefore, we are setting aside the order of the Tribunal as well as the order of the High Court.

5. Subject to above, Civil Appeal stands disposed of. Assessee will pay cost of Rs. 10,000/- (Rupees Ten Thousand) to the Department as cost condition precedent."

(emphasis supplied)

26. The Supreme Court, therefore, in the aforesaid judgment, emphasised that there would be difference if a person is engaged in proving any service connected with the making or preparation of the advertisement and a case where a person merely complies with the instruction of the clients for printing the contents supplied by the client.

27. In so far as levy of service tax on printing activity is concerned, the Commissioner was justified in holding that it would not be subjected to levy of service tax. In the first instance the activity of printing of advertisement content on PVC material which results into printed PVC flex or PVC board would amount to manufacture and, therefore, would not be leviable to service tax. Secondly, the

appellant has not challenged the findings of the adjudicating authority on this aspect.

28. For the post 01.07.2012 period, the Commissioner has held that the activity undertaken by the respondent being merely transfer of title on goods by sale and subjected to Sales Tax/VAT on the full value, would be excluded from the scope of service tax under section 65B (44)(a)(1) of the Finance Act.

29. The sale of the product has not been disputed and even otherwise no grounds have been raised in the present appeal to assail this part of the order of the Commissioner. There is also force in the submission of learned counsel for the respondent that even the show cause notice does not indicate why service tax would be leviable for the period post 01.07.2012.

30. Thus, for all the reasons stated above, the order dated 18.07.2014 passed by the Commissioner does not call for any interference in this appeal. The appeal is, accordingly, dismissed.

(Order pronounced on **14.09.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
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SERVICE TAX APPEAL NO. 23542 OF 2014

Commissioner of Central Excise,
Hyderabad-III Commissionerate,
Hyderabad

...Appellant

versus

Macro Media Digital Imaging Pvt. Ltd.
147/D, Secto-I, Line-1, Phase-II,
Cherlapally IDA, Hyderabad- 500051
(Telangana State)

...Respondent

Appearance

Mr. V.R. Pavan Kumar, Authorized Representative of the Department
Mr. S. Thirumalai, Advocate for the Respondent

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

Date of Hearing: 04.05.2022

ORDER

(Order pronounced on **14.09.2022**)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(C.J. MATHEW)
MEMBER (TECHNICAL)**